

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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HEALING POWER INC.,

Plaintiff,

v.

**MEMORANDUM & ORDER**  
07-CV-4175 (NGG) (RLM)

ACE CONTINENTAL EXPORTS LIMITED, et al.,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

On May 1 , 2008, Magistrate Judge Roanne L. Mann issued a Report and Recommendation (“R&R”) recommending that this case be dismissed because Defendants appear to have abandoned their defense of the case and failed to prosecute their counterclaims. (Docket Entry # 24.) Magistrate Judge Mann recounted the history of Defendants’ inactivity in the case since discharging their counsel, including their failure to respond to a March 26, 2008 Order to Show Cause directing them to show cause why default judgment should not be entered against them. (Id. at 2.) Magistrate Judge Mann noted that, although Defendants were served with the Order to Show Cause, they did not respond and have taken no steps to defend this action. (Id.) Accordingly, she recommended that this court enter default judgment against Defendants and dismiss their counterclaims for failure to prosecute. (Id. at 3.) Finally, Magistrate Judge Mann stated that “[a]ny objections to the recommendations contained in this Report and Recommendation must be filed with the Honorable Nicholas G. Garaufis on or before May 23, 2008. Failure to file objections in a timely manner may waive a right to appeal the District Court order.” (Id.)

On May 22, 2008, Defendants filed a letter with the court requesting a twenty-eight day extension of time to file objections. (Docket Entry # 25.) Over Plaintiff's objection (Docket Entry # 26), Magistrate Judge Mann granted the extension in part, giving Defendants until June 2, 2008 to file objections. (Docket Entry #27.) To date, Defendants have not filed objections to the R&R.

In reviewing an R&R, this court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). In order to accept a magistrate judge's R&R where, as here, no timely objection has been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001); see also Pizarro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (a district court may accept an R&R if it is "not facially erroneous"). Having reviewed the R&R, the court is satisfied that there is no clear error on the face of the record given Defendants' failure to respond to Magistrate Judge Mann's Order to Show Cause why default judgment should not be entered in favor of Plaintiff. Therefore, this court adopts Magistrate Judge Mann's R&R in its entirety and notes that, by their failure to object, the parties have waived further judicial review of this Order. See Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002) ("failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision").

Accordingly, Plaintiff's motion for default judgment is granted. The Clerk of Court is directed to mail copies of this Memorandum and Order to Defendants and their English solicitors at the addresses listed in Magistrate Judge Mann's R&R. (See Docket Entry #24.) Finally, the amount of damages due Plaintiff shall be determined at an inquest before Magistrate Judge Mann, who shall provide a Report and Recommendation thereon.

SO ORDERED.

Dated: June 20, 2008  
Brooklyn, N.Y.

s/ Nicholas G. Garaufis  
NICHOLAS G. GARAUFIS  
United States District Judge